

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES A. BURK, JR., et al.,

Plaintiffs,

v.

CITY OF COLUMBUS, et al.,

Defendants.

Case No. 2:20-cv-06256

Judge James L. Graham

Magistrate Judge Chelsey M. Vascura

**ANSWER OF DEFENDANTS CITY OF COLUMBUS,
JOSEPH FIHE, AND KEVIN WINCHELL**

For its answer to the Complaint filed by Plaintiffs James A. Burke, Jr. and Summer Hilfers (“Plaintiffs”) on December 4, 2020, Defendants City of Columbus, Joseph Fihe, and Kevin Winchell (“Defendants”), admit, deny, and state, the following:

1. Paragraph 1 of Plaintiffs’ Complaint is a generalized narrative from Plaintiffs’ perspective. To the extent any allegations are made, Defendants deny each and every allegation made in Paragraph 1 of Plaintiffs’ Complaint.

2. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 2 of Plaintiffs’ Complaint.

3. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 3 of Plaintiffs’ Complaint. To the extent any allegations are made, Defendants deny each and every allegation made in Paragraph 3 of Plaintiffs’ Complaint.

4. Paragraph 4 of Plaintiff's Complaint contains legal conclusions to which no response is required. Answering further, Defendants admit Fihe and Winchell were at all times material to this Complaint, duly appointed police officers employed by the City of Columbus, and were acting in the course and scope of their employment.

5. Paragraph 5 of Plaintiff's Complaint contains legal conclusions to which no response is required. Answering further, Defendants admit the City of Columbus is a municipal corporation, duly incorporated under the law of the State of Ohio, is the employer of Defendants Fihe and Winchell, and is responsible for the policies, practices, and customs of its Police Department.

6. Defendants admit that this Court has jurisdiction. Defendants deny all other allegations contained in Paragraph 6 of Plaintiffs' Complaint.

7. Defendants admit that venue is proper in this forum. Defendants deny all other allegations contained in Paragraph 7 of Plaintiffs' Complaint.

8. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 8 of Plaintiffs' Complaint.

9. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 9 of Plaintiffs' Complaint.

10. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 10 of Plaintiffs' Complaint.

11. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 11 of Plaintiffs' Complaint.

12. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 12 of Plaintiffs' Complaint.

13. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 13 of Plaintiffs' Complaint.

14. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 14 of Plaintiffs' Complaint.

15. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 15 of Plaintiffs' Complaint.

16. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 16 of Plaintiffs' Complaint.

17. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 17 of Plaintiffs' Complaint.

18. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 18 of Plaintiffs' Complaint.

19. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 19 of Plaintiffs' Complaint.

20. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 20 of Plaintiffs' Complaint.

21. Defendants admit the allegations contained in Paragraph 21 of Plaintiffs' Complaint.

22. Defendants admit the allegations contained in Paragraph 22 of Plaintiffs' Complaint.

23. As to the allegations contained in Paragraph 23 of Plaintiffs' Complaint, Defendants admit that Officers Fihe and Winchell were dispatched to 3359 Edgebrook Drive. Defendants deny any remaining allegations contained in Paragraph 23 of Plaintiffs' Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of Plaintiffs' Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of Plaintiffs' Complaint.

26. Defendants admit the allegations contained in Paragraph 26 of Plaintiffs' Complaint.
27. Defendants deny the allegations contained in Paragraph 27 of Plaintiffs' Complaint.
28. Defendants deny the allegations contained in Paragraph 28 of Plaintiffs' Complaint.
29. Defendants deny the allegations contained in Paragraph 29 of Plaintiffs' Complaint.
30. Defendants deny the allegations contained in Paragraph 30 of Plaintiffs' Complaint.
31. Defendants deny the allegations contained in Paragraph 31 of Plaintiffs' Complaint.
32. Defendants admit the allegations contained in Paragraph 32 of Plaintiffs' Complaint.
33. Defendants deny the allegations contained in Paragraph 33 of Plaintiffs' Complaint.
34. Defendants deny the allegations contained in Paragraph 34 of Plaintiffs' Complaint.
35. Defendants deny the allegations contained in Paragraph 35 of Plaintiffs' Complaint.
36. Defendants deny the allegations contained in Paragraph 36 of Plaintiffs' Complaint.
37. Defendants deny the allegations contained in Paragraph 37 of Plaintiffs' Complaint.
38. Defendants deny the allegations contained in Paragraph 38 of Plaintiffs' Complaint.
39. Defendants deny the allegations contained in Paragraph 39 of Plaintiffs' Complaint.
40. Defendants deny the allegations contained in Paragraph 40 of Plaintiffs' Complaint.
41. Defendants deny the allegations contained in Paragraph 41 of Plaintiffs' Complaint.
42. Defendants deny the allegations contained in Paragraph 42 of Plaintiffs' Complaint.
43. Defendants deny the allegations contained in Paragraph 43 of Plaintiffs' Complaint.
44. Defendants deny the allegations contained in Paragraph 44 of Plaintiffs' Complaint.
45. Defendants deny the allegations contained in Paragraph 45 of Plaintiffs' Complaint.
46. Defendants deny the allegations contained in Paragraph 46 of Plaintiffs' Complaint.
47. Defendants deny the allegations contained in Paragraph 47 of Plaintiffs' Complaint.
48. Defendants admit the allegations contained in Paragraph 48 of Plaintiffs' Complaint.

49. Defendants deny the allegations contained in Paragraph 49 of Plaintiffs' Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of Plaintiffs' Complaint.

51. Defendants deny the allegations contained in Paragraph 51 of Plaintiffs' Complaint.

52. Defendants deny the allegations contained in Paragraph 52 of Plaintiffs' Complaint.

53. Defendants deny the allegations contained in Paragraph 53 of Plaintiffs' Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of Plaintiffs' Complaint.

55. In response to Paragraphs 55 through 59 of Plaintiffs' Complaint, Defendants incorporate the foregoing statements, admissions, and denials made above as if those statements, admissions, and denials had been fully rewritten and re-alleged here.

56. Defendants deny the allegations contained in Paragraph 56 of Plaintiffs' Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of Plaintiffs' Complaint.

58. Defendants deny the allegations contained in Paragraph 58 of Plaintiffs' Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of Plaintiffs' Complaint.

60. In response to Paragraphs 60 through 74 of Plaintiffs' Complaint, Defendants incorporate the foregoing statements, admissions, and denials made above as if those statements, admissions, and denials had been fully rewritten and re-alleged here.

61. Defendants deny the allegations contained in Paragraph 61 of Plaintiffs' Complaint.

62. Defendants deny the allegations contained in Paragraph 62 of Plaintiffs' Complaint.

63. Defendants deny the allegations contained in Paragraph 63 of Plaintiffs' Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of Plaintiffs' Complaint.

65. Defendants deny the allegations contained in Paragraph 65 of Plaintiffs' Complaint.

66. Defendants deny the allegations contained in Paragraph 66 of Plaintiffs' Complaint.

67. Defendants deny the allegations contained in Paragraph 67 of Plaintiffs' Complaint.

68. Defendants deny the allegations contained in Paragraph 68 of Plaintiffs' Complaint.

69. Defendants deny the allegations contained in Paragraph 69 of Plaintiffs' Complaint.

70. Defendants deny the allegations contained in Paragraph 70 of Plaintiffs' Complaint.

71. Defendants deny the allegations contained in Paragraph 71 of Plaintiffs' Complaint.

72. Defendants deny the allegations contained in Paragraph 72 of Plaintiffs' Complaint.

73. Defendants deny the allegations contained in Paragraph 73 of Plaintiffs' Complaint.

74. Defendants deny the allegations contained in Paragraph 74 of Plaintiffs' Complaint.

75. In response to Paragraphs 75 through 78 of Plaintiffs' Complaint, Defendants incorporate the foregoing statements, admissions, and denials made above as if those statements, admissions, and denials had been fully rewritten and re-alleged here.

76. Defendants deny the allegations contained in Paragraph 76 of Plaintiffs' Complaint.

77. In response to Paragraph 77 of Plaintiffs' Complaint Defendants admit that Fihe and Winchell are, and have been, employed by the City of Columbus as a police officers, and were working in that capacity on July 7, 2020. Defendants deny any remaining allegations contained in Paragraph 77 of Plaintiffs' Complaint.

78. Defendants deny the allegations contained in Paragraph 78 of Plaintiffs' Complaint.

79. In response to Paragraphs 79 through 82 of Plaintiffs' Complaint, Defendants incorporate the foregoing statements, admissions, and denials made above as if those statements, admissions, and denials had been fully rewritten and re-alleged here.

80. Defendants deny the allegations contained in Paragraph 80 of Plaintiffs' Complaint.

81. Defendants deny the allegations contained in Paragraph 81 of Plaintiffs' Complaint.

82. Defendants deny the allegations contained in Paragraph 82 of Plaintiffs' Complaint.

83. In response to Paragraphs 83 through 85 of Plaintiffs' Complaint, Defendants incorporate the foregoing statements, admissions, and denials made above as if those statements, admissions, and denials had been fully rewritten and re-alleged here.

84. Defendants deny the allegations contained in Paragraph 84 of Plaintiffs' Complaint.

85. Defendants deny the allegations contained in Paragraph 85 of Plaintiffs' Complaint.

86. Defendants deny each and every allegation made in Plaintiffs' Complaint that has not been specifically and unequivocally admitted in one or more of the foregoing paragraphs of this answer.

AFFIRMATIVE DEFENSES

87. With respect to Plaintiffs' state-law claims, Defendants are entitled to all applicable immunities, defenses, set-offs, and limitations set forth in Ohio's Political Subdivision Tort Liability Act, O.R.C §§ 2744.01–2744.11.

88. Plaintiffs' claims are barred, in whole or in part, by the doctrine of qualified immunity.

89. Plaintiffs' claims are barred (either in whole or in part) by a failure to mitigate or to reasonably minimize their own purported damages.

90. Plaintiffs' claims are barred (in whole or in part) by the doctrines of estoppel, waiver, or laches.

91. Plaintiffs' fail to state claims upon which relief can be granted.

92. Defendants reserve the right to assert such additional defenses that may become apparent as this civil action proceeds through discovery.

PRAYER FOR RELIEF

Having fully answered Plaintiffs' Complaint, Defendants respectfully request: (a) an order from this Court dismissing Plaintiffs' claims with prejudice; (b) an order from this Court assessing

costs (including reasonable attorneys' fees incurred in defending the claims asserted herein) to Defendants; (c) an order from this Court awarding Defendants any and all such other relief the Court deems just, necessary, or appropriate; and (d) a final judgment entry in Defendant's favor.

Respectfully submitted,

/s/ William A. Sperlazza

William A. Sperlazza (0081863)

CITY OF COLUMBUS, DEPARTMENT OF LAW

ZACH KLEIN, CITY ATTORNEY

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Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on February 1, 2021, I electronically filed the foregoing with the Clerk of this Court by using the Court's CM/ECF System. Copies will be served upon counsel of record by, and may be obtained through, the Court's CM/ECF System.

/s/ William A. Sperlazza

William A. Sperlazza (0081863)